



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648-BD23

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Amendment 105

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) submitted Amendment 105 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) to the Secretary of Commerce (Secretary) for review. If approved, Amendment 105 would establish a process for Western Alaska Community Development Quota (CDQ) groups and cooperatives established under the Amendment 80 Program (Amendment 80 cooperatives) to exchange harvest quota from one of three flatfish species (flathead sole, rock sole, and yellowfin sole) for an equal amount of another of these three flatfish species, while maintaining total catch below acceptable biological catch (ABC) limits for each species and below the sum of the total allowable catches (TACs) for all three species. This action would modify the annual harvest specification process to allow the Council to

establish the maximum amount of flathead sole, rock sole, and yellowfin sole that may be exchanged based on social, economic, or biological considerations. This action is necessary to mitigate the operational variability, environmental conditions, and economic factors that may constrain the CDQ groups and Amendment 80 cooperatives from achieving, on a continuing basis, the optimum yield (OY) in the Bering Sea and Aleutian Islands Management Area (BSAI) groundfish fisheries. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, BSAI FMP, and other applicable laws.

DATES: Comments on the amendment must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2013-0074, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0074, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments
- Mail: Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All Personal

Identifying Information (for example, name, address) confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of Amendment 105 to the BSAI FMP, the Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the Categorical Exclusion prepared for this action (collectively the “Analysis”), the supplemental information report prepared for the final 2014 and 2015 harvest specifications (Harvest Specifications Supplemental Information Report (SIR)), and the Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (Harvest Specifications EIS) may be obtained from <http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Seanbob Kelly, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) in section 304(a) requires that each regional fishery management council submit an amendment to a fishery management plan to NMFS for review and approval, disapproval, or partial approval by the Secretary. The Magnuson-Stevens Act in section 304(a) also requires that the Secretary, upon receiving an amendment to a fishery management plan, immediately publish a notice in the Federal Register announcing that the amendment is available for public review and comment. The Council has submitted Amendment 105 to the FMP to the Secretary for review. This document announces that proposed Amendment 105 to the BSAI FMP is

available for public review and comment.

The groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) are managed under the BSAI FMP. The BSAI FMP was prepared by the Council under the Magnuson-Stevens Act. The RIR prepared for this action contains a complete description of the alternatives and a comparative analysis of the potential impacts of the alternatives (see **ADDRESSES**).

Amendment 105 is intended to provide additional harvest opportunities to CDQ groups and Amendment 80 cooperatives participating in the BSAI flatfish fisheries. As proposed, Amendment 105 would maximize catch, retention, and utilization of flathead sole, rock sole, and yellowfin sole while maintaining catch at, or below, the ABC.

Amendment 105 is intended to result in higher retention and utilization of groundfish without increasing overall bycatch of groundfish or non-groundfish species beyond existing limitations. Amendment 105 would amend the BSAI FMP to incorporate changes in the annual harvest specifications process used by the Council and NMFS to set annual catch limits described in greater detail in the following paragraphs.

Annually at the December Council meeting, the Council adopts the overfishing levels (OFLs) and ABC limits for BSAI flatfish as part of the harvest specifications process. The Council also recommends TACs at this meeting. The TAC is the annual catch target for a species or species group, derived from the ABC by considering social and economic factors and management uncertainty. The BSAI FMP requires that the TAC must be set lower than or equal to the ABC. The BSAI FMP requires the sum of the TACs in all BSAI groundfish fisheries to be set within a range from 1.4 to 2 million metric tons (mt). Pursuant to the BSAI FMP, the Council may recommend TACs that are

lower than the ABCs if setting TACs equal to ABCs would cause TACs to exceed 2 million mt. In addition, a statutory provision requires that "[t]he optimum yield for groundfish in the Bering Sea and Aleutian Islands Management Area shall not exceed 2 million metric tons" (See section 803(c) of Pub. L. No. 108-199). NMFS complies with this law by limiting the sum of the TACs for all BSAI groundfish to 2 million mt.

Flathead sole, rock sole, and yellowfin sole are valuable flatfish species that are not fully harvested due to a variety of statutory and regulatory constraints on the setting of TAC limits and operational, economic, and environmental limitations described in more detail in the Analysis prepared for this action (See **ADDRESSES**). Typically, flatfish TACs are set below the ABC to ensure that the sum of the TACs do not exceed the statutory 2 million mt OY for the BSAI groundfish fisheries and to provide harvest opportunity for other valuable groundfish fisheries.

NMFS assigns CDQ groups and Amendment 80 cooperatives exclusive harvest privileges for flathead sole, rock sole, and yellowfin sole on an annual basis. The CDQ groups are assigned CDQ allocations, and the Amendment 80 cooperatives are assigned cooperative quota (CQ). CDQ groups are assigned CDQ allocations for flathead sole, rock sole, and yellowfin sole based on provisions in section 305(i) of the Magnuson-Stevens Act. Amendment 80 cooperatives are assigned CQ for flathead sole, rock sole, and yellowfin sole in proportion to the total amount of Amendment 80 QS assigned to that Amendment 80 cooperative for that species. Regulations prohibit CDQ groups and Amendment 80 cooperatives from exceeding a CDQ or CQ allocation.

In this mixed species fishery, operators target certain species of flatfish but also take a variety of species incidentally. The composition of groundfish species taken in the

BSAI flatfish fisheries varies by season and by fishing year. Both Amendment 80 cooperatives and vessels fishing CDQ allocations are affected by the same uncertain operational conditions (e.g., difficult to predict harvest rates of flatfish in target and non-target fisheries), unpredictable environmental conditions, and uncertain market conditions that can limit harvest.

Although a broad range of non-regulatory arrangements and regulatory measures have been implemented to aid in the more complete harvesting of flathead sole, rock sole, and yellowfin sole CDQ and CQ, these measures have limited utility to address the range of conditions that can constrain harvest. The fact that harvests of flathead sole, rock sole, and yellowfin sole are substantially below the available CDQ or CQ allocations indicates that existing management measures may not provide the flexibility needed to allow more complete harvest.

The objective of proposed Amendment 105 is to provide CDQ groups and Amendment 80 cooperatives with additional opportunities to fully harvest flathead sole, rock sole, or yellowfin sole allocations, while ensuring that biological limits are not exceeded. As proposed, Amendment 105 would allow CDQ groups and Amendment 80 cooperatives to apply to NMFS to exchange a portion of their unused annual allocations of one or two flatfish species for an equal amount of another flatfish species (i.e. a Flatfish Exchange).

As proposed, Amendment 105 would amend the BSAI FMP to define an ABC surplus for flathead sole, rock sole, and yellowfin sole as the difference between each species' annual ABC and TAC. The ABC surplus would represent the maximum additional amount of flathead sole, rock sole or yellowfin sole that could be harvested

above the TAC. Amendment 105 would also amend the BSAI FMP to define an ABC reserve for flathead sole, rock sole, and yellowfin sole as the ABC surplus that may be reduced for social, economic, or ecological considerations during the determination of the annual harvest specifications. Amendment 105 would amend the BSAI FMP to clarify that the Council would specify the ABC surplus, and determine the ABC reserve for flathead sole, rock sole, and yellowfin sole each year in the annual specifications process. Amendment 105 would amend the BSAI FMP to specify that the ABC reserve would be apportioned to CDQ groups and Amendment 80 cooperatives. Amendment 105 would amend the BSAI FMP to specify that the CDQ groups would receive 10.7 percent of the ABC reserve for each species of flathead sole, rock sole, and yellowfin sole, and that each species would be allocated among the six CDQ groups based on current allocation schedules established in sections 305(i)(1)(B) and (C) of the Magnuson-Stevens Act. Amendment 105 would amend the BSAI FMP to specify that each Amendment 80 cooperative would be allocated an amount of the ABC reserve for flathead sole, rock sole, and yellowfin sole remaining after allocation to the CDQ groups, and that each species would be allocated in proportion to each Amendment 80 cooperative's share of flathead sole, rock sole, and yellowfin sole Amendment 80 QS.

Amendment 105 would amend the BSAI FMP to require a CDQ group or an Amendment 80 cooperative to submit an application for NMFS' approval in order to exchange unused CDQ or CQ for a portion of its CDQ ABC reserve or Amendment 80 ABC reserve. Amendment 105 would amend the BSAI FMP to limit each CDQ groups or Amendment 80 cooperative to no more than three exchanges of CDQ or CQ for a portion of its CDQ ABC reserve or Amendment 80 ABC reserve.

Amendment 105 is not intended to completely resolve the complex issues that have constrained the CDQ groups and Amendment 80 cooperatives from fully harvesting their flatfish allocations. As proposed, Amendment 105 is intended to provide the flexible management necessary to mitigate a diverse range of conditions that may limit harvest of flathead sole, rock sole, and yellowfin sole. Amendment 105 would provide participants with additional tools to address the regulatory, economic, and environmental challenges to fully harvest the exclusive harvest allocations in these multi-species fisheries.

The proposed modifications to the BSAI FMP under Amendment 105 are appropriate given the fact that CDQ groups and Amendment 80 cooperatives are participating in catch share fisheries that are capable of limiting their overall harvests within specific catch limits. CDQ groups and Amendment 80 cooperatives are subject to strict management controls that would maintain total catch below ABC limits for flathead sole, rock sole, and yellowfin sole and below the sum of the TACs for all three species.

Public comments are being solicited on proposed Amendment 105 to the BSAI FMP through the end of the comment period (see **DATES**). NMFS intends to publish this action in the Federal Register and seek public comment on a proposed rule that would implement Amendment 105, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period for Amendment 105 to be considered in the approval/disapproval decision on Amendment 105. All comments received by the end of the comment period on Amendment 105, whether specifically directed to the BSAI FMP amendment or the proposed rule will be considered in the FMP approval/disapproval

decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

Authority: 16 U.S.C. 773 et seq., 1801 et seq., 3631 et seq.; and Pub. L. 108-447.

Dated: June 10, 2014.

Emily H. Menashes,

Acting Director,

Office of Sustainable Fisheries,

National Marine Fisheries Service.

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